



NORTH DAKOTA DEPARTMENT OF HEALTH
Environmental Health Section

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April 29, 2004

Margaret Moomey
8P-W-GW
USEPA REGION 8
999 18th Street
Suite # 300
Denver, CO 80202-2466



RE: North Dakota UIC Rules Revision Package - Attorney General's Statement

Dear Ms. Moomey:

Enclosed is the signed original and one copy of the final North Dakota Attorney General's statement of legal authority for our Class V rule revisions. Wendy Cheung said that she would be out of the office for two weeks and suggested that I send it to you. Our rule revision package should now be complete and ready to forward to EPA headquarters for final approval, at your earliest possible convenience.

Should you have any questions or require additional information, please contact me at 701-328-5233.

Sincerely,

Scott Radig
Environmental Engineer
Manager, Ground Water Protection Program
Division of Water Quality

sradig@state.nd.us
Encl.

**STATEMENT OF LEGAL AUTHORITY
NORTH DAKOTA ATTORNEY GENERAL
REGARDING
STATE UNDERGROUND INJECTION CONTROL PROGRAM
AND AMENDMENTS TO THE NORTH DAKOTA
UNDERGROUND INJECTION CONTROL PROGRAM RULES**

I certify that the laws of the State of North Dakota provide adequate authority for the Department and its director, the North Dakota State Health Officer, to implement the amendments to North Dakota's Underground Injection Control Program rules (N.D. Admin. Code ch. 33-25-01) to satisfy the requirements of the Underground Injection Control program regarding Class V Injection Wells, SUBPART G--REQUIREMENTS FOR OWNERS AND OPERATORS OF CLASS V INJECTION WELLS-- which amendments mostly consist of incorporations by reference of the changes in the federal rules governing the program since N.D. Admin. Code ch. 33-25-01 was last amended. North Dakota has the authority to implement and enforce the Class V UIC program in a manner as stringent as the requirements of 40 C.F.R., subpart G, and other applicable federal requirements.

1. Section 144.84, 144.85, 144.88 – Additional Requirements for Owners and Operators of Class V Injection Wells. Requirements for Motor Vehicle Waste Disposal and large Capacity Cesspools.

The UIC requirements apply to large capacity cesspools that receive waste from multiple dwellings or have the capacity to receive waste from more than 20 persons a day. The UIC requirements apply to Motor vehicle waste disposal wells that receive or have received fluids from vehicular repair or maintenance activities. Section 144.84 requires that wells must be closed or permitted within a certain period of time, and new wells and cesspools are prohibited as of April 5, 2000. Section 144.84(b)(1) provides that a Class V well is no longer authorized, and the operator must obtain a permit or close the well where there is a failure to comply with the "prohibition of fluid movement standard." Section 144.85 provides that the requirement apply to existing motor vehicle and waste disposal wells in groundwater protection areas, and applies to all new motor vehicle waste disposal wells as of April 5, 2000. Section 144.88 sets forth the requirements and deadlines.

State Authority: N.D. Admin. Code §§ 33-25-01-12(3); 33-25-01-16(5)(a),(b).

Remarks: N.D. Admin. Code § 33-25-01-16(5)(a) provides that new large capacity cesspools that receive waste from multiple dwellings or have the capacity to receive waste from 20 or more persons per day are prohibited after April 5, 2000, and existing large capacity cesspools must be closed by April 5, 2005. N.D. Admin. Code § 33-25-01-16(5)(b) provides that new motor vehicle waste disposal wells that receive

waste fluids from vehicular repair or maintenance activities are prohibited after April 5, 2000. N.D. Admin. Code § 33-25-01-12(3) provides that owners/operators of Class V wells must notify the Director at least thirty days prior to closure. North Dakota incorporates by reference 40 C.F.R. subpart G, sections 144.79-144.89.

2. Section 144.84(b)(1) – Prohibition of Fluid Movement Standard.

Section 144.84(b)(1) provides that a Class V well is no longer authorized, and the operator must get a permit, where there is a failure to comply with the "prohibition of fluid movement standard."

State Authority: N.D. Admin. Code §§ 33-25-01-04(1),(2); 33-25-01-16(4)(a); 33-25-01-16(5); 33-16-02.1-08(1)(a).

Remarks: N.D. Admin. Code § 33-25-01-16(5) states: "All owners or operators of class V wells shall be in compliance with title 40 C.F.R. part 144, subpart G." Since North Dakota incorporates federal law, and requires compliance with all sections of Subpart G - Requirements for Owners and Operators of Class V Injection Wells- North Dakota enforces the prohibition of fluid movement standard.

N.D. Admin. Code § 33-25-01-04(1) prohibits movement of fluid into underground sources of drinking water. N.D. Admin. Code § 33-25-01-04(2) provides that the Director "shall prescribe" additional requirements in accordance with 40 C.F.R. part 144 in the event of such fluid movement. The imposition of those additional requirements means that the well is no longer rule authorized. Taken as a whole N.D. Admin. Code § 33-25-01-04 effectively works to remove rule-authorization from a well that has caused fluid movement in violation of an applicable MCL, even though these provisions don't include the express consequences of such a fluid movement, as they are set out in 40 C.F.R. 144.84(b)(1).

Also, N.D. Admin. Code § 33-25-01-16(4)(a) states: "The director may require the operator of a class V well authorized by rule to apply for and obtain an individual or area permit. Cases where permits may be required include: . . . (3) Protection of an underground source of drinking water requires the injection operation be regulated by requirements not contained in the rules." This section also provides the department authority to protect an underground source of drinking water by requiring a permit for any case, including prohibition of fluid movement. A well that is in violation and not permitted or closed is subject to an enforcement action.

The prohibition of fluid movement standard in Section 144.84(b)(1) refers to standards described in sections 144.12(a) and 144.82(a). Under these sections "injection activity cannot allow the movement of fluid containing any contaminant into USDW's if the presence of that contaminant may cause a violation of the primary drinking water standards under 40 C.F.R. part 141, other health based standards, or may otherwise adversely affect the health of persons." North Dakota law also enforces these requirements through its narrative standards for water quality. N.D. Admin. Code § 33-16-02.1-08(1)(a) states: "that all waters of the state shall be: . . . (4) Free from substances attributable to municipal, industrial, or other discharges or agricultural practices in concentrations or combinations which are toxic or harmful to humans, animals, plants, or resident aquatic biota. . . ."

North Dakota law prohibits any discharge of waste into an underground disposal system that will cause a violation of state water quality standards. This is equivalent to the "prohibition of fluid movement standard." Therefore, North Dakota law requires that an

operator must obtain a permit or close a well where there is a failure to comply with the federal "prohibition of fluid movement standard."

3. Sections 144.82 Section 144.87 – Underground Sources of Drinking Water. Section 144.82 require that owners and operators of Class V wells cannot allow movement of fluid into Underground Sources of Drinking Waters that might cause endangerment. Section 144.87 subjects existing motor vehicle wells to regulation if located in a groundwater protection area, or a sensitive groundwater area.

State Authority: N.D. Admin. Code § 33-25-01-16(5)(c),(d),(e).

Remarks: N.D. Admin. Code § 33-25-01-16(5)(c) provides that existing motor vehicle waste disposal wells in Groundwater Protection Areas designated by the director must be closed or permitted within one year of completion of the Groundwater Protection Area designation, or within one year from the effective date of the rule. Existing motor vehicle waste disposal wells in Sensitive Groundwater Areas designated by the director must be closed or permitted by January 1, 2007. North Dakota incorporates by reference 40 C.F.R., part 144, subpart G. (sections 144.79-144.89). N.D. Admin. Code § 33-25-01-16(5).

4. Section 144.89 – Closure of Class V Well. In limited cases, the UIC Director may authorize the conversion (reclassification) of a motor vehicle waste disposal well to another type of Class V well.


State Authority: N.D. Admin. Code § 33-25-01-16(5)(f).

Remarks: N.D. Admin. Code § 33-25-01-16(5)(f) provides that in limited cases the UIC Director may authorize the conversion (reclassification) of a motor vehicle waste disposal well to another type of Class V well. North Dakota law requires equally stringent rules regarding conversion.

CERTIFICATE OF AUTHORITY

The undersigned Attorney General for the State of North Dakota certifies that the statutes, rules and regulations of the State of North Dakota contain sufficient authority for the State of North Dakota to continue to administer the Federal Underground Injection Control Program pursuant to the provisions of Part C of the Safe Drinking Water Act (42 U.S.C. 300h).

Dated this 13th day of April, 2004.


State of North Dakota
Wayne Stenehjem
Attorney General



NORTH DAKOTA DEPARTMENT OF HEALTH
Environmental Health Section

Location:

1200 Missouri Avenue
Bismarck, ND 58504-5264

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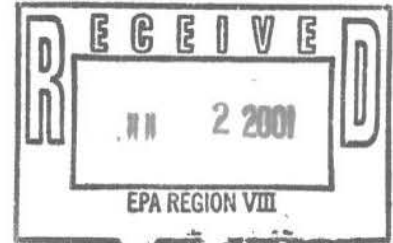
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June 30, 2001

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RE: North Dakota UIC Rules Revision Package

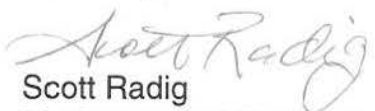
Dear Ms. Johnson:

Enclosed are three copies of the rule revision package for North Dakota's UIC 1422 Program. The package includes a new memorandum of agreement between the North Dakota Department of Health and EPA Region 8, a copy of the updated program description, and North Dakota's final updated UIC rules.

Please have Jack McGraw sign the MOA and return a copy to us. Copies of the signed MOA should be inserted into section 1 of each copy of the revision package. The plan for determining other sensitive groundwater areas is covered in the program description, starting on page 27. The attorney general's opinion is included as the first page of the UIC rules publication.

Should you have any questions or require additional information, please contact me at 701-328-5233.

Sincerely,


Scott Radig
Environmental Engineer
Division of Water Quality

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Encl.

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